Dave Transportation Services, Inc. and International Brotherhood of Teamsters Local 104, General Teamsters (Excluding Mailers), State of Arizona, an affiliate of International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 28-RC-5481

April 25, 1997

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered an objection to an election held February 21, 1997, and the Regional Director's report, the pertinent portions are attached as an Appendix, recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 23 for and 15 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the International Brotherhood of Teamsters Local 104, General Teamsters (Excluding Mailers), State of Arizona, an affiliate of International Brotherhood of Teamsters, AFL—CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time bus operators; excluding all office clerical employees, guards, and supervisors as defined by the Act.

APPENDIX

REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

Pursuant to a Stipulated Election Agreement approved by the Regional Director on January 21, 1997, in the above-captioned case, an election by secret ballot was conducted under the direction and supervision of me on February 21, by agents of the National Labor Relations Board, among the employees of the Employer in the unit agreed by the parties to be appropriate for the purposes of collective bargaining. The tally of ballots served on the parties at the conclusion of the balloting showed the following results:

Approximate number of eligible voters	42
Number of Void Ballots	0
Number of Votes cast for Petitioner	23
Number of Votes cast against	15
participating Labor Organization	
Number of Valid votes counted	38
Number of Challenged ballots	0
Number of Valid votes counted plus	38
Challenged Ballots	

An objection to conduct affecting the results of the election was timely filed by the Employer on February 24, with copies being served on all parties.

THE OBJECTION

The objection states:

The basis of the objection is that the Union disseminated to the employees written literature which created the impression the National Labor Relations Board was endorsing the election of the Union.

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I, after reasonable notice to all parties to present relevant evidence, has caused an investigation to be made of the objection. The parties were afforded an opportunity to submit evidence bearing on the issues. Having considered all of the evidence submitted by the parties and otherwise disclosed by the investigation, I issue the following report and recommendations:

In support of its objection, the Employer submitted five documents which were distributed by the Petitioner to bargaining unit employees during the preelection campaign. Copies are attached as Exhibits A through E [omitted from publication.] Exhibits A through D appear on Union's letterhead over the signature of the Petitioner's Organizer and are addressed to "Dave Transportation Workers." The body of the letter is a campaign message apparently responding to the Employer's antiunion propaganda. Exhibit E is a copy of a cartoon soliciting a "yes" vote for the Petitioner. The following message in small type face print appears at the end of each of these exhibits:

This message is brought to you by Teamsters Local Union 104. For more information call Homer Collom at (602) 272-5561, Ext 121 or the National Labor Relations Board at 379-3361.

The Employer contends that this message constitutes objectionable conduct as it could have been construed by employees as an endorsement of the Petitioner by the Board. In support of its position, the Employer cites *Donner Packing Co.*, 236 NLRB 1697 (1978); *GAF Corp.*, 234 NLRB 1209 (1978); and *Monmouth Medical Center v. NLRB*, 604 F.2d 820 (3d Cir. 1979).

In GAF Corp., an election was set aside based on a leaflet mailed to employees which contained language similar to that used on the Board's official election notice. The Agency's name was printed in the same typeface as that used on official Board documents. A rendering of the United States Capitol over the words "It's the Law" was superimposed. The Board found that the leaflet, at the very least, created an ambiguity in the mind of the reader as to the document's

¹ All dates are 1997, unless otherwise indicated.

² All full-time and regular part-time bus operators; excluding all office clerical employees, guards, and supervisors as defined in the Act.

originator. In *Donner Packing*, the Board cited *GAF Corp*, and set aside an election where the union had mailed letters which created the impression that the Board supported the union.

Unlike these cases, here there is no doubt as to the originator of the documents. All of the documents presented by the Employer were clearly from the Petitioner. None of the exhibits utilize altered or reproduced Agency documents. The only reference to the Agency in the documents is the message described above which appears at the end of each document in very small print. I find nothing in these documents that could cause a potential voter to believe that the Agency supports or endorses the message contained in the documents.

In Monmouth Medical Center, 234 NLRB 328 (1978), the employer contended that the election should be set aside because the union had represented to employees that the Board endorsed the union. The union placed the following language in the final paragraph of a letter it had sent to employees prior to the election:

When something you hear from the anti-union people contradicts what union organizers have told you, there is an easy way to find out who is telling the truth. Just call the Officer of the Day at the National Labor Relations Board at 645–2100.³

In another letter to the employees, the union stated:

If you doubt in any way information given you by the [hospital] administration or by a representative of the union, we urge you to call the National Labor Relations Board at 645–2100 to verify what you've been told.⁴

The Board, in overruling this objection, determined that:

[I]t is not objectionable for either party to a election to refer employees to the Board for answers to their questions. Nor does referral to the Board become objectionable simply because the Board, in order to retain its neutrality, must refuse to answer a question regarding local issues in a campaign. Thus, we find that the [p]etitioner neither created the impression that the Board favored the [p]etitioner in the election nor disturbed the "atmosphere of impartiality." Additionally, we also note that no Board document or proceeding was involved. [Footnote omitted.]

It is clear that the language alleged as objectionable in the instant case is similar to that in *Monmouth*, and has even less impact because it does not immediately follow a contention that one of the parties to the election may be less than fully truthful. Here, the Petitioner makes no claim that the Board will react favorably to any position that it has taken. Accordingly, I find that there is no basis to depart from the Board's holding in *Monmouth Medical Center*.

On the basis of the foregoing, and the entire investigation, I find that there is no basis for invalidating the results of the election conducted in this matter and I shall recommend that the Employer's objection be overruled.

RECOMMENDATION

For the reasons set forth above, it is recommended that the Employer's objection be overruled in its entirety and that a Certification of Representative issue. ⁶

³ Id. at 331.

⁴Id. at 331.

⁵ Id. at 331.

⁶Under the provision of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by Friday, April 4, 1997.

Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the report, are not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.